

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

IN THE MATTER OF)

PETITION FOR RULEMAKING OF)
THE NATIONAL ASSOCIATION OF)
ATTORNEYS GENERAL PROPOSING)
ADDITIONAL DISCLOSURES BY)
SOME OPERATOR SERVICE)
PROVIDERS)

AND)

COMPTTEL'S FILING IN CC DOCKET)
NO 92-77 PROPOSING A RATE)
CEILING ON OPERATOR SERVICE)
CALLS)

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REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF
STATE UTILITY CONSUMER ADVOCATES

I. INTRODUCTION

The National Association of State Utility Consumer Advocates (NASUCA)¹ respectfully submits the following reply comments to certain issues raised in Comptel's Filing in CC Docket No. 92-77 Proposing a Rate Ceiling on Operator Service Calls ("Comptel Proposal"), and Petition for Rulemaking of the National Association of Attorneys General Proposing Additional Disclosures by Some Operator Service Providers ("NAAG Petition").

As the NAAG Petition demonstrates, and the Comptel Proposal acknowledges, consumers around the country continue to be plagued by excessive charges from operator service companies "I've never heard of." NASUCA supports efforts to control the prices charged by operator service companies that are not subject to competition. We have been commenting in dockets discussing this nettlesome problem for several years. The comments

¹NASUCA is an association of 42 consumer advocate offices in 38 states and the District of Columbia whose members are designated by state law to represent the interests of utility consumers before state and federal regulatory agencies and the courts.

in this docket re-hash many of the same arguments made before. Unfortunately, the Comptel Proposal does not offer consumers real protections. NASUCA looks forward to the time when consumers finally get some relief.

There are three approaches to this persistent problem: (1) a perfectly educated, informed consuming public; (2) an enforceable hard rate cap at reasonable rates; or, (3) a restructuring of the industry to eliminate the bidding wars for aggregator locations where the highest OSP bidder wins and consumers lose.

Increasing consumer information about OSPs will certainly improve the consumer's position in the short run. But the history of this industry convinces us that the first approach is probably not attainable at an acceptable cost and is not a long term solution to the OSP problem. The NAAG Petition correctly views its proposal as an interim improvement in consumer education prior to implementation of a comprehensive solution. The Comptel Proposal uses the second approach of a rate cap but falls well short of an enforceable ceiling at reasonable levels.

The Comptel Proposal would impose a so-called rate ceiling as an alternative to Billed Party Preference. But the proposed rate ceiling is so high that, not only would it fail to curb price-gouging by OSPs, it would institute Commission-sanctioned exorbitant rates. The rate ceiling is soft, easily lifted by demonstrating higher costs from, say, commissions paid to aggregators. The ceiling quickly will become a floor as OSPs under the ceiling raise their rates to meet it, and others justify rates in excess of the ceiling. We are also concerned with the enforcement provisions of the Comptel Proposal.

The NAAG Petition seeks to arm consumers with additional information alerting them to the possibility of charges in excess of their expectations. Consumers would then be able to take the next step and determine the actual charges for the call or dial around to their preferred carrier. NAAG proposes this disclosure requirement as an interim measure prior to implementation of Billed Party Preference because it is "convinced that many consumers need immediate redress from the oppressive pricing practices of some OSPs."² NASUCA agrees that delaying implementation of BPP necessitates putting some protections in place for consumers in the interim. But we are concerned that the NAAG Petition would not be enforceable and does not go far enough to protect consumers. We agree with Bell Atlantic which points out: "NAAG's proposal would rely for its success on the willing compliance by the very 'bad actors' which created the problem in the first place."³

NASUCA continues to support the third approach: industry restructuring through Billed Party Preference, assuming the Commission's benefit/cost analysis of BPP is sustained. The

²NAAG petition at 4.

³Bell Atlantic at 1.

problems of exorbitant rates and consumer choice that BPP is intended to address remain significant and, as the NAAG Petition demonstrates, largely unresolved. Since the FCC has indicated it will delay implementing BPP, NASUCA recommends an interim measure to protect consumers from high rates and provide additional disclosure.

II. DISCUSSION

A. THE COMPTTEL PROPOSAL WOULD NOT PROTECT CONSUMERS FROM UNREASONABLY HIGH RATES AND OTHER OSP ABUSES.

The Comptel Proposal recommends that the FCC establish a rate ceiling on charges to consumers for interstate operator-assisted calls. The rate ceiling would apply to total charges, including premises surcharges and commissions paid to aggregators. An OSP could be investigated by the FCC if its rates exceeded the ceiling. There are several problems with the Comptel Proposal, both with the rate ceiling and with enforcement.

First, the price ceiling Comptel proposes is inadequate since it would still permit extremely high rates.⁴ We agree with Ameritech, which points out that only the most egregious price gouging would thereby be affected.⁵ Comptel claims that the proposed ceiling eliminates most of the charges that generated complaints to the FCC about OSP rates. Apparently, advocates of the Comptel Proposal believe that price gouging is acceptable as long as consumers don't complain to the FCC.

The proposed ceiling is much higher than the rates currently charged by many OSPs, including the dominant carriers.⁶ Price competition among providers was intended to replace strict rate regulation of OSPs. But it is obvious that the OSPs do not face competition. Consequently, the price ceiling should be based on the rates of leading competitors in order to foster competition effectively.⁷ We share the view that, if OSPs

⁴ Comptel claims that "to identify the appropriate level for a rate ceiling, a representative sampling of complaints to the FCC about operator service charges was examined. A rate schedule was devised which would ensure that all charges would be below those which prompted virtually all complaints in the sample." Comptel Proposal at 7.

⁵Ameritech at 1.

⁶Sprint at 7,8 including the "Comparison of Proposed Ceiling with Sprint's Rates." Ameritech at 1,2.

⁷ Although Comptel agrees that "[t]he ceiling should also allow for competitors to set rates based on the marketplace so that competition can work effectively," it contends that a rate cap "should not be based on the rate levels or cost structure of any particular carrier,

cannot offer services to consumers at rates no greater than those of "the full-service industry, the Commission must question whether their existence serves the public interest."⁸

Adopting Comptel's ceiling also would provide an incentive for lower-priced carriers to raise their rates, since there would be no competitive pressure to keep them low. As one OSP attested, the ceiling quickly will become the floor.⁹ The rate ceiling also fails to allow for different rates depending on call type (collect, calling card or third-party billed), time of day or distance. Consumers are accustomed to the different rates based on call type, time of day and distance.¹⁰

Finally, the Comptel rate ceiling is not really a ceiling. Under the proposal, it will be fairly simple for an OSP to obtain FCC approval of rates that exceed the already excessive rate maximum. An OSP wishing to charge rates above the rate ceiling would have "an expedited paper hearing to review the proffered cost justification" for those rates.¹¹ Rates might be suspended for a short period of time. Moreover, as APCC acknowledges, the rate ceiling would not affect existing OSP rates that would be subject to investigation but not suspension.¹² (We also note that the Comptel Proposal does not provide for participation in the expedited hearings by the public or other interested parties.)

The enforcement mechanism in the Comptel Proposal is woefully inadequate. It requires local exchange carriers (LECs) that bill and collect for OSPs to report to the FCC rates in excess of the cap.¹³ The FCC must then take the initiative to review those rates. If the FCC determines that action is needed for a particular OSP, a more detailed report would

dominant or otherwise." Comptel Proposal at 7. Comptel offers no explanation why a rate cap based on dominant carrier rates would not encourage a competitive market.

⁸Sprint at 11.

⁹U.S. Osiris at 9,

¹⁰U.S. Osiris at 8.

¹¹The Comptel Proposal states: "Exercise of the Commission's rate review powers in this way need not be administratively burdensome or time-consuming. Any operator service provider seeking to exceed the rate ceiling could be designated for an expedited paper hearing to review the proffered cost justification. Unlike the traditional approach reflected by the uniform system of accounts, the Commission could mandate very simple cost categories." Comptel Proposal at 6.

¹²APCC at 15,16.

¹³Apparently OSPs who do not use LECs for billing escape even this weak monitoring provision.

be provided by the LEC, and the FCC then could investigate the OSP. In the meantime, the OSP can continue to charge high rates. We concur in the comments of Southwestern Bell Telephone which states: "This proposal incorporates the worst elements of regulatory enforcement time-lag."¹⁴

The time delays inherent in this process mean consumers will continue to pay excessive rates for some time. And, given the sheer number of OSPs in the marketplace, the Commission will be unable to rein in more than a few outliers.

If the Commission is inclined to use a rate cap as an interim measure until BPP is implemented, NASUCA recommends that the Commission employ the Ameritech proposal with some modifications.¹⁵ In brief, here is the NASUCA-modified Ameritech proposal:

1. Price ceilings should be adopted for operator services by call type, time of day, and mileage bands using the highest rate among AT&T, MCI, and Sprint in that category.
2. Ceilings should be adjusted annually by public notice so OSPs would only have to track these rates on an annual basis rather than every time they were adjusted by AT&T, MCI, or Sprint.
3. Proposed OSP rates above the ceiling would be filed on 120 day notice and would include detailed cost support to justify the rate. "The Commission should make clear that carriers proposing rates that are above the ceiling in any particular category will face an extremely high hurdle in justifying those rates, and that the Commission will carefully scrutinize the reasonableness of the costs underlying those rates, including commission payments to aggregators."¹⁶
4. OSPs with rates approved above the ceiling should be required to provide actual rate information through a voice-over before call connection on all calls.
5. Sufficient monetary penalties for noncompliance with these requirements should be adopted to provide an effective incentive to comply.¹⁷

¹⁴SWBT at 6.

¹⁵Ameritech at 2,3.

¹⁶Ameritech at 2.

¹⁷The Pacific Companies at 4.

B. THE DISCLOSURE PROVISIONS IN THE NAAG PETITION RELY ON VOLUNTARY COMPLIANCE AND SHOULD CONTAIN ACTUAL RATE INFORMATION FOR CONSUMERS TO MAKE INFORMED CHOICES

In its petition for rulemaking, NAAG proposes to require OSPs whose rates exceed dominant carrier rates to provide additional information to consumers before a call is connected. NAAG would require high-priced OSPs to provide a voice-over announcement following carrier identification. The voice-over would inform the consumer that the call may not be carried by the caller's regular telephone carrier and that the carrier may charge more than the consumer's regular telephone company. The voice-over would also provide an 800 number where the caller could obtain information about how to contact his or her regular phone company.

NASUCA agrees with NAAG that the current disclosure requirements do not provide consumers with enough information about the OSP carrying the call, and are not adequate to protect consumers from the unexpected and excessive rates charged by many OSPs. NAAG's proposal, however, depends on voluntary compliance. If some OSPs do not comply with existing disclosure requirements (as NAAG points out, and NASUCA believes to be the case), they are unlikely to comply with NAAG's proposed requirement.¹⁸

Further, the NAAG Petition places a burden on the calling party instead of on the OSP. When confronted with a high-priced OSP, the NAAG proposal means that consumers may have to make one or two phone calls before completing the intended call. The consumer would need to call for a rate quote and then, if the rates were unacceptable, possibly make a second call to find out how to connect to the preferred carrier. We think that consumers who today do not request rate quotes are unlikely to make two additional phone calls to avoid high rates.

NASUCA suggests that the NAAG approach would be improved by incorporating the suggestion set out in the comments of the Colorado Public Utilities Commission staff. The Colorado PUC staff urges the FCC to require disclosure of the actual rates prior to call connection and prior to incurring any charges for the call.¹⁹ Up-front rate information is preferable to requiring consumers to seek out this information with multiple calls. The Colorado PUC staff proposal requires no additional effort by consumers to make an informed choice.

¹⁸MCI at 6, Sprint at 3,4.

¹⁹Colorado PUC Staff at 6.

III. CONCLUSION

NASUCA appreciates the efforts of NAAG to address the consumer problems surrounding the operator services industry. The NAAG Petition would offer some relief for consumers prior to implementation of Billed Party Preference. We suggest improvements in the NAAG proposal and link it with rate limits.

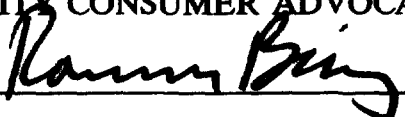
We also understand why some industry players support a meaningless ceiling on rates instead of real reform in the industry. The Comptel Proposal does not sufficiently protect consumers of OSP services from price gouging and blocked access to their preferred carrier. The proposal suffers from a fatal flaw: it depends on the voluntary compliance of those OSPs who continue to violate existing requirements for branding, disclosure, and unblocking. There is no reason to think that situation will change.

Some combination of these proposals may be appropriate as an interim measure until BPP is implemented. In that regard, we recommend the Ameritech proposal, with modifications, as an interim measure.

But all these proposals are inferior to Billed Party Preference as a long term solution to OSP market distortions. BPP will enhance competition by changing the incentives in the operator services and the payphone markets. The consumer, not the aggregator, will select the OSP based on price and quality of service. Payphone providers will compete to provide phones at aggregator locations based on quality of their services rather than the level of their commissions. Consumers will not have to dial lengthy access codes to reach their preferred carrier or seek out rate quotes. By eliminating or greatly reducing consumer complaints and by eliminating the need for enforcement of rate caps or further disclosure, regulatory costs will be reduced.

Dated this 27th day of April 1995.

Respectfully submitted,
NATIONAL ASSOCIATION OF STATE
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Certificate of Service

I hereby certify that, on this 26th day of April, 1995, the foregoing Reply Comments of the National Association of State Utility Consumer Advocates were served by first-class mail, postage prepaid upon the parties on the attached service list.

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